

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Applications Filed by Consolidated)	
Communications Holdings, Inc. and)	WC Docket No. 16-417
FairPoint Communications, Inc. for the)	
Assignment or Transfer of Control of)	
Certain Domestic and International)	
Authorizations)	

COMMENTS OF GWI AND OTT COMMUNICATIONS

Biddeford Internet Corp., d/b/a Great Works Internet (“GWI”) and CRC Communications LLC and Mid-Maine Telplus LLC, both doing business as OTT Communications (collectively, “OTT”), respectfully request that in any order approving the proposed transfer of control of FairPoint Communications, Inc. and/or its subsidiaries (“FairPoint”) into Consolidated Communications Holdings, Inc. (“Consolidated”), the Commission make a specific finding that the resulting Merged Entity will be a Bell Operating Company (“BOC”) within the meaning of 47 U.S.C. § 153(5), and will remain subject to all applicable BOC requirements, including but not limited to those contained in 47 U.S.C. §§ 252 and 271-276.

The Commission specifically found that FairPoint was a BOC when it approved the transfer to FairPoint of Verizon’s operations in the Northern New England states of Maine, New Hampshire, and Vermont in 2008.¹ The same circumstances exist here and the Commission should make the same finding. Doing so will help ensure that the important procompetitive

¹ *In the Matter of Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 514, ¶¶ 33-36 (2008) (“*Verizon-FairPoint Order*”).

safeguards that go along with BOC status are maintained, to the benefit of consumers and competition.

The Commenters

GWI is headquartered in Biddeford, Maine. It provides voice, broadband, and data services to residential and business customers in Maine. To do so, it both self-provisions fiber facilities and obtains interconnection and other facilities and services from FairPoint. More specifically, in order to supplement its own network facilities, GWI collocates its facilities and equipment in central offices owned by FairPoint and makes use of unbundled network elements (“UNEs”) offered by FairPoint in accordance with applicable law.

OTT is headquartered in New Gloucester, Maine. It provides voice, broadband, and data services to business customers in Maine, New Hampshire and Massachusetts. It also self-provisions fiber facilities and obtains interconnection and other facilities and services from FairPoint. More specifically, OTT utilizes FairPoint UNE-loops to serve customers in the healthcare, education, banking, and government sectors. OTT also uses dark fiber and transport trunks to augment its own fiber network.

Discussion

I. The Merged Entity Will be the Successor or Assign of a BOC.

A. Legal Standard.

The Communications Act defines a Bell Operating Company as either one of a group of specifically listed companies – one of which is New England Telephone and Telegraph Company – or as “any successor or assign of any such company that provides wireline telephone

exchange service.”² The Commission employs a “substantial continuity” test to determine if the merged entity is a successor or assign under 47 U.S.C. § 153(5)(B). The Merged Firm qualifies as a successor or assign (and therefore as a BOC) if it has “acquired substantial assets of its predecessor and continued, without interruption or substantial change, the predecessor’s business.”³ As the Commission has held, substantial continuity exists where “one entity steps into the shoes of, or replaces, another entity.”⁴

In its 2008 *Verizon-FairPoint Order*, the Commission specifically found “that FairPoint will be a Bell Operating Company (BOC) following this transaction.”⁵ The Commission based its decision on its finding “that the transaction will result in FairPoint acquiring substantial assets that are necessary to continue the incumbent’s traditional business operation from Verizon for the entire three-state region, resulting in no interruption or substantial change to Verizon’s business operation.”⁶

² 47 U.S.C. § 153(5); *Verizon-FairPoint Order*, ¶ 33. These comments apply only to incumbent LEC operations in the former New England Telephone and Telegraph Company service territories in the Northern New England states of Maine, New Hampshire, and Vermont. GWI and OTT understand that the affected FairPoint incumbent LECs include Northern New England Telephone Operating Company LLC and Telephone Operating Company of Vermont, LLC, but GWI and OTT do not know if this represents an exhaustive list. GWI and OTT do not intend that these comments apply to FairPoint incumbent LECs operating outside the three Northern New England states, or within the Northern New England states but not in a service territory of the former New England Telephone and Telegraph Company.

³ *Verizon-FairPoint Order*, 23 FCC Red. at 534, ¶ 34 (quoting *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43 (1987)); *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control*, Memorandum Opinion & Order, 14 FCC Red. 14712, ¶ 454 (1999) (“*SBC-Ameritech Order*”).

⁴ *SBC-Ameritech Order*, ¶ 454.

⁵ *Verizon-FairPoint Order*, ¶ 33.

⁶ *Id.*, ¶ 34.

B. There Will Be Substantial Continuity between FairPoint and the Merged Entity after the Transaction.

Based on the standards set forth above, there can be no question that the merged entity's Northern New England incumbent local exchange carriers will be successors or assigns of the current FairPoint BOCs and therefore must be considered BOCs themselves. In the Applicants' own words, "Consolidated will step into FairPoint's shoes in all respects"⁷ The Applicants' use of the precise words of the Commission's test conclusively shows that the Merged Entity will be a successor or assign of FairPoint and, therefore, properly classified as a BOC under the Act.

Both before the Commission and in the corresponding approval proceedings in Maine, New Hampshire, and Vermont, the Applicants have stressed the seamlessness of the transaction and continuity of operations, services, rates, and legal and regulatory status after the merger. In their Joint Application to the Commission, the Applicants say:

- The transaction is a change only at the holding company level and will not affect any operations or legal identities of the Applicants.
- The transaction will be seamless to customers. Customers will not experience any immediate changes in services, or rates, terms and conditions of service.
- There will be no need to change any billing systems or operational support systems before closing the transaction.
- Existing tariffs will not be affected, and will remain in effect. Any future changes in rates, terms, and conditions of service will be made in accordance with applicable rules and notice requirements.⁸

⁷ *Joint Petition of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc., FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC, FairPoint Vermont, Inc., UI Long Distance, Inc., and Enhanced Communications of Northern New England, Inc., for Approval of a Transfer of Control by Merger, Pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311, Vermont Public Service Board Dkt. No. 8881, Joint Petition, ¶ 5 (Dec. 29, 2016) ("Vermont Petition")* (relevant pages attached as Attachment 1).

⁸ Joint Application, Ex. C (Public Interest Statement) at 3-4.

Likewise, before the affected Northern New England state commissions, the Applicants emphasize that all will be the same after the proposed merger. Thus, in Maine, the Applicants state:

- The proposed transaction entails solely a change of ownership at the holding company level, and will not affect any of the operations or legal identities of the FairPoint Maine companies.
- Customers will not experience any immediate changes in services, or rates, terms and conditions of service. Future changes, if any, to rates, terms and conditions of service will be made in the ordinary course of business subject to applicable rules and notice requirements.
- Customers will continue to interact with the FairPoint Maine companies at their existing places of business.
- No FairPoint Maine company's operations, plant, equipment, franchises, permits or other assets will be changed or be transferred.
- The transaction will have no effect on FairPoint Maine's wholesale customers. All of FairPoint Maine's obligations under their interconnection agreements, tariffs and other arrangements, in addition to their statutory obligations under Sections 251 and 252 of the Telecommunications Act, will remain unaffected by the transaction. Further, FairPoint Maine companies providing wholesale service will retain their obligations under Sections 271 through 276 of the Act that have not yet sunset.⁹

In New Hampshire, the Applicants also discuss at length the lack of change from the perspective of retail and wholesale customers:

- The transaction will be seamless to all current FairPoint retail and wholesale customers in New Hampshire and in all other states in which FairPoint conducts business, as well as to all carriers with which FairPoint interconnects.

⁹ *Northern New England Telephone Operations, LLC and Its FairPoint Maine Affiliates; Fairpoint Communications, Inc.; and Consolidated Communications Holdings, Inc., Request for Approval of Reorganization and Credit Facilities Pertaining to the Merger of FairPoint Communications, Inc. and Consolidated Communications Holdings, Inc.* (35-A M.R.S. §§ 708, 901, 902, and 1101), Maine Public Utilities Commission Dkt. No. 2016-00307, Petition for Approval of Reorganization and Credit Facilities, at 13-14 (Dec. 29, 2016) ("*Maine Petition*") (relevant pages attached as Attachment 2).

- The transaction involves only a change of ownership at the holding company level and will not affect any of the operations or obligations of Fair Point or its subsidiaries.
- No existing retail or wholesale services, or any interconnection-based services with other carriers, will be discontinued or interrupted. Customers will not experience any change in services, rates, or terms and conditions of service.
- Existing tariffs, interconnection agreements, retail catalogs and customer agreements will not be affected and will remain in effect. Future changes, if any, in rates, terms and conditions of service will be made in accordance with applicable rules and notice requirements.
- There will be no need to change any billing systems or operational support systems before or after the closing of the transaction.¹⁰

Finally, in Vermont, the Applicants reiterate that nothing will change for retail and wholesale customers.

- The transaction will be seamless from the point of view of FairPoint's current customers, who will continue to receive the services presently provided by FairPoint on the same terms.
- FairPoint's Vermont operating entities will continue to operate under their existing authority, and no transfers of assets, properties or services will take place.
- FairPoint's existing customer-facing systems will remain in place after the merger; no system cutovers are required.
- No new certificates of public good under state law or new designations of Eligible Telecommunications Carriers ("ETCs") under federal law will be required to complete this transaction.
- Consolidated will step into FairPoint's shoes in all respects and will assume all rights and obligations that FairPoint has in Vermont.¹¹

The Applicants' consistent statements before the Commission and the three state commissions lead to the inescapable conclusion that there will be substantial continuity between

¹⁰ *Consolidated Communications Holdings, Inc. and FairPoint Communications, Inc. — Joint Petition for Findings in Furtherance of the Acquisition of FairPoint Communications, Inc., and its New Hampshire Operating Subsidiaries by Consolidated Communications Holdings, Inc.*, New Hampshire Public Utilities Commission Dkt. DT 16-872, at 5-6 (Dec. 29, 2016) (relevant pages attached as Attachment 3).

¹¹ *Vermont Petition*, ¶¶ 5, 45-46.

FairPoint and the Merged Entity. The Merged Entity will be a successor or assign of FairPoint, and therefore, a BOC, remaining subject to all BOC obligations in the Northern New England operating territories.

II. The Commission Should Specifically Find That the Merged Entity Retains FairPoint’s Existing BOC Status.

As it did when approving the Verizon/FairPoint transaction, the Commission should make a specific finding “that [the Merged Entity] will be a Bell Operating Company (BOC) following this transaction.”¹²

The Applicants acknowledge that they “will retain their obligations under sections 271-276 of the Act that have not yet sunset, and any surviving *Computer Inquiry* requirements in those markets where the Commission determined a Licensee was a Bell Operating Company because it was a successor or assign of Verizon in parts of Maine, New Hampshire and Vermont.”¹³ To the extent that this is an admission by the Applicants that they will remain BOCs after the transaction, there should be no controversy over including an explicit finding of BOC status in any approval order the Commission issues.

However, the Applicants refer to prospective compliance with sections 271-276 in only some of their applications in the relevant jurisdictions.¹⁴ While it is unlikely that the omission of such references in some of the of their petitions signifies an intent on the part of the Applicants to disavow their BOC obligations, the Commission should eliminate any doubt or ambiguity on the issue by making the express finding in any approval order that the Merged Entity retains

¹² *Verizon-FairPoint Order*, ¶ 33.

¹³ Joint Application, Ex. C at 12-13, citing *Verizon-FairPoint Order*, ¶¶ 35-36.

¹⁴ In addition to this application, the Applicants’ petition before the Maine PUC acknowledges that the FairPoint Maine companies will retain their obligations under Sections 271-276. *Maine Petition* at 14. The Vermont and New Hampshire petitions do not contain an equivalent statement.

BOC status and remains subject to all applicable BOC obligations in the former New England Telephone and Telegraph Company service territories in the states of Maine, New Hampshire, and Vermont. Such an explicit finding will reduce regulatory uncertainty and the likelihood of future disputes over the scope of the Merged Entity's post-closing obligations.

III. Important Policy Reasons Justify Continued BOC Status for the Merged Entity.

The purpose of the sections of the Act applicable to BOCs, Sections 252 and 271-276, is to address concerns regarding the BOCs opening their market to competition. The potential loss of the market-opening benefits of Section 271 is an important reason for ensuring that FairPoint's BOC status is explicitly maintained post-merger.¹⁵

In addition, a number of significant protections for competition and competitors like GWI and OTT derive from FairPoint's status as a successor BOC to Verizon. First and foremost is the requirement that FairPoint comply with the 14-point checklist of Section 271.¹⁶ Additional protections are the result of conditions imposed upon Verizon in connection with its obtaining approval to offer in-region, inter-LATA services under § 271 of the Act. Failure to maintain FairPoint's BOC status would jeopardize these important protections.

These protections include a Wholesale Performance Plan, in effect in all three states, which provides financial incentives designed to ensure that FairPoint offers nondiscriminatory wholesale services to competitors. The current Wholesale Performance Plan, which was significantly revised and updated in 2015, is a successor to the Performance Assurance Plan

¹⁵ See *Verizon-FairPoint Order*, ¶ 33.

¹⁶ 47 U.S.C. § 271(c)(2)(B).

imposed in all three states at the time of, and arising from, Verizon's gaining Section 271 authority in these states.¹⁷

Another important protection put in place as a result of the Section 271 approval proceedings is the Rapid Response dispute resolution process, under which competitors like the Joint Commenters receive an expedited hearing before the state commission on service and billing disputes between themselves and FairPoint.¹⁸ Delays in resolving disputes can severely disrupt service to customers and have serious financial consequences to carriers that have disagreements with FairPoint, particularly when the dispute involves intercarrier fees and charges.

These protections are by no means obsolete. They continue to be used and remain necessary today. Within the past year, the Maine Supreme Judicial Court upheld the decision of

¹⁷ "In all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long distance market." *In the Matter of Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Dkt. No. 02-157, Memorandum Opinion and Order, FCC 02-262, ¶ 169 & n. 577 (rel. Sept. 25, 2002) ("Verizon NH/DE 271 Approval Order"); see *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Memorandum Opinion and Order, FCC 02-187, ¶ 61 (rel. June 19, 2002) ("Verizon ME 271 Approval Order"); *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, FCC 02-118, ¶ 74 (rel. Apr. 17, 2002).

¹⁸ *Verizon ME 271 Approval Order*, ¶ 6, fn. 13; *Verizon NH/DE 271 Approval Order*, ¶ 6, fn. 10.

the Maine PUC Rapid Response Process Team resolving in GWI's favor a \$352,434 billing dispute that arose under its interconnection agreement with FairPoint.¹⁹

If the Commission does not include a specific finding of continued BOC status, the omission could create doubt that the Merged Entity remains a BOC and subject to these obligations. There is no gain but significant potential harm if a cloud is cast over these important, procompetitive protections. To preclude doubt that the Merged Entity must continue to honor these protections, the Commission should specifically find that the Merged Entity retains FairPoint's status as a BOC and continues to be subject to all applicable BOC obligations.

Conclusion

For the foregoing reasons, in any order approving the proposed transaction, the Commissions should expressly provide that the Merged Entity will remain a Bell Operating Company, subject to all applicable rules, regulations, and requirements pertaining to BOCs.

Respectfully submitted,

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February 13, 2017

¹⁹ *Northern New England Telephone Operations LLC v. Public Utilities Commission et al.*, Dkt No. PUC-15-316, Memorandum of Decision, Decision No. Mem 16-38 (Apr. 14, 2016) (copy attached as Attachment 4).

Attachment 1

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No.

Joint Petition of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc., FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC, FairPoint Vermont, Inc., UI Long Distance, Inc., and Enhanced Communications of Northern New England, Inc., for Approval of a Transfer of Control by Merger, Pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311

JOINT PETITION

Summary

This is a joint petition by Consolidated and FairPoint, two longstanding wireline providers, both public companies in good standing, to allow them to merge at a national level as expeditiously as possible to pursue the opportunities of more significant scale while continuing to pursue excellence in service at a local level in the states currently served by them. The merger does not involve a technical cutover of any kind, does not reduce competition in any market, creates a more financially sound entity, which, if approved, will pool the management resources of two companies whose roots started in telephone service in the 19th century.

Introduction

1. Consolidated Communications Holdings, Inc. (“Consolidated Holdings”), Consolidated Communications, Inc. (“Consolidated”), Falcon Merger Sub, Inc. (“Falcon”), FairPoint Communications, Inc. (“FairPoint”), Telephone Operating Company of Vermont LLC d/b/a FairPoint Communications (“TOCV”), Enhanced Communications of Northern New England, Inc. (“ECNNE”), FairPoint Vermont, Inc. (“FPV”), and UI Long Distance, Inc. (“UILD,” and all of the foregoing, together, the “Joint Petitioners”), jointly petition the Vermont

4. The combined company will be better positioned to continue Consolidated's demonstrated commitment to financial and operational stability in all the markets it serves. Consolidated has already secured an incremental term loan facility to refinance FairPoint's currently outstanding credit facility of approximately \$916 million, reducing the risk of securing financing with acceptable terms closer to the closing.

5. The transaction will be seamless from the point of view of FairPoint's current customers. It will have no adverse effect on the services provided to FairPoint's retail or wholesale customers in Vermont, who will continue to receive the services presently provided by FairPoint on the same terms. Because FairPoint's four Vermont operating entities will continue to operate under their existing authority, no transfers of assets, properties or services will take place as a result of the transaction. In particular:

- FairPoint's existing customer-facing systems will remain in place after the closing, so that no system cutovers are required upon implementation of the transaction. Any future information technology upgrades or expansions to Consolidated's systems will be done with careful planning and execution in the normal course of business operations.
- No new certificates of public good under state law or new designations of Eligible Telecommunications Carriers ("ETCs") under federal law will be required to complete this transaction.
- Consolidated will step into FairPoint's shoes in all respects and will assume all rights and obligations that FairPoint has in Vermont, including, without limitation, TOCV's obligations under the 2015-2019 Vermont Incentive Regulation Plan that was approved by the Board in an Order issued on March 18, 2016, in Docket No. 8337.
- The status of FairPoint and/or its Vermont operating entities in all cases and proceedings now pending before Vermont courts and regulatory agencies, including the Board, will not be affected by the transaction.

43. As described above, Consolidated presently deploys a broad suite of products in its existing markets. The proposed transaction will allow Consolidated to leverage its enhanced product suite and its consultative sales approach across FairPoint's markets, including Vermont.

44. Consolidated also brings over 120 years of experience in providing communications services as an independent, incumbent local exchange carrier and as a carrier-of-last-resort. Headquartered in its original community of Mattoon, Illinois, Consolidated values each community it serves and is committed to using its greater operational scale to benefit its local residential and commercial customers.

(2) The transaction is good for FairPoint customers in Vermont.

45. The transaction, at closing, will be seamless to FairPoint's current customers and will have no adverse impact on the customers of FairPoint. The same Vermont operating companies will continue to provide services under the existing E911 contract with the State and to FairPoint's wholesale and retail customers under existing rates, terms and conditions without disruption.

46. Upon closing, FairPoint's customer-facing systems will remain in place and no system cutovers will be required.

47. After the closing, Consolidated expects to continue and support FairPoint's investment and focus in technologically advanced telecommunications networks and to enhance and expand its network by deploying technologies to provide additional capacity to its customers. Where necessary, Consolidated continues to enhance an existing copper network to increase bandwidth in order to provide additional products and services to marketable homes. At the same time, Consolidated believes bringing fiber closer to the customer premises can increase

Attachment 2

December 29, 2016

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS, LLC AND ITS FAIRPOINT MAINE
AFFILIATES; FAIRPOINT COMMUNICATIONS,
INC.; AND CONSOLIDATED COMMUNICATIONS
HOLDINGS, INC., Request for Approval of
Reorganization and Credit Facilities Pertaining to the
Merger of FairPoint Communications, Inc. and
Consolidated Communications Holdings, Inc. (35-A
M.R.S. §§ 708, 901, 902, and 1101)

PETITION FOR APPROVAL OF
REORGANIZATION AND
CREDIT FACILITIES

SUMMARY

This is a joint petition by Consolidated Communications and FairPoint Communications, two longstanding wireline providers, both public companies in good standing, to allow them to merge at a national level as quickly as is appropriate to pursue the opportunities of more significant scale while continuing to pursue excellence in service at a local level in the states they currently serve. The merger does not involve a technical cutover of any kind, does not reduce competition in any market, creates a more financially sound entity, and, if permitted to proceed, will pool the management resources of two companies whose roots started in telephone service in the 19th century.

INTRODUCTION

The Maine-based FairPoint affiliates¹ (collectively referred to as “FairPoint Maine”), FairPoint Maine’s parent company, FairPoint Communications, Inc. (“FCI”), and Consolidated Communications Holdings, Inc. (“Consolidated”) (together, the “Petitioners”), respectfully request that the Maine Public Utilities Commission (the “Commission”) grant any and all approvals and

¹ These Maine-based FairPoint petitioning affiliates are: Northern New England Telephone Operations, LLC (“NNETO”), China Telephone Company, Community Service Telephone Company, Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, d/b/a FairPoint Communications.

1. Section 708: Reorganization Approval

Petitioners request that the Commission approve the Transaction pursuant to 35-A M.R.S. § 708 (“Section 708”) because it is consistent with the interests of FairPoint Maine’s ratepayers and FCI’s investors.

Section 708 provides that “no reorganization may take place without the approval of the Commission.”¹⁸ The Commission interprets Section 708 as imposing a “no net harm standard” and reviews the evidence to determine whether the benefits of the merger are “at least equal to any risks, to ensure no harm to ratepayers and shareholders.”¹⁹ The Commission has stated that the requirements of Section 708 are met “if the rates or services to customers of the affected utility will not be adversely affected by the reorganization.”²⁰

i. The Transaction is Consistent with the Interests of FairPoint Maine’s POLR and Wholesale Customers.

As will be discussed in more detail in the Petitioners’ forthcoming prefiled direct testimony, the proposed Transaction is in the interests of FairPoint Maine’s POLR and wholesale customers for the following reasons:

- **The Transaction Will Have No Adverse Impact on FairPoint Maine’s POLR and Wholesale Customers.**

The proposed Transaction entails solely a change of ownership at the holding company level, and will not affect any of the operations or legal identities of the FairPoint Maine companies.

¹⁸ 35-A M.R.S. § 708(2)(A).

¹⁹ *Bangor Gas Company, L.L.C., Request for Approval Relating to Long-Financing, Affiliated Interest Transactions and Reorganization Pursuant to 35-A M.R.S. §§ 707, 708, 901 and 902*, Docket No. 2016-30, Order Approving Stipulation at 6 (Aug. 19, 2016) (“Bangor Gas Order”).

²⁰ Bangor Gas Order at 6 (citing *Northern Utilities, Inc., Request for Approval of Reorganization (NiSource/Columbia Merger and Related Transactions)*, Docket No. 2000-322, Order (June 30, 2000); *Consumers Maine Water Co., Request for Approval of Reorganization Due to Merger with Philadelphia Suburban Corp.*, Docket No. 98-648 (Jan. 12, 1999); *New England Telephone & Telegraph Company and NYNEX Corp., Reorganization Intended to Effect the Merger with Bell Atlantic*, Docket No. 96-388 (Feb. 6, 1997); *Bangor Hydro-Electric Company and Stonington and Deer Isle Power Company, Joint Application to Merge Property, Franchises and Permits and for Authority to Discontinue Service*, Docket No. 87-109, Order Approving Stipulation and Merger (Nov. 10, 1987); and *Greenville, Millinocket and Skowhegan Water Company, Joint Application to Sell Utility Property to Wanaheh Water Company and to Discontinue Service*, Docket No. 92-250, Order Approving Stipulation (Dec. 15, 1992)).

Therefore, FairPoint Maine's POLR and wholesale customers will not experience any immediate changes in services, or rates, terms and conditions of service in connection with the Transaction.²¹ Future changes, if any, to rates, terms and conditions of service will be made in the ordinary course of business subject to applicable rules and notice requirements.²²

Additionally, FCI, FairPoint Maine and Consolidated intend for the Transaction to be seamless for FairPoint Maine's POLR customers. POLR customers and other FairPoint Maine customers will continue to interact with the FairPoint Maine companies at their existing places of business. No FairPoint Maine company's operations, plant, equipment, franchises, permits or other assets will be changed or be transferred in connection with the Transaction. The Transaction also will not involve any changes to ILEC or POLR service areas.

The Transaction will have no effect on FairPoint Maine's wholesale customers. Although Consolidated is acquiring control of FCI, all of FairPoint Maine's obligations under their interconnection agreements, tariffs and other arrangements, in addition to their statutory obligations under Sections 251 and 252 of the Telecommunications Act,²³ will remain unaffected by the Transaction. Further, FairPoint Maine companies providing wholesale service will retain their obligations under Sections 271 through 276 of the Act that have not yet sunset.

Furthermore, this Transaction is markedly different from the FCI acquisition of Verizon-Maine's regulated telephone utility assets in 2008 in Docket No. 2007-67. In that transaction, FPI did not acquire Verizon-Maine's back-office systems that supported the network, daily operations, customer service and billing. Verizon provided those back-office functions on a transitional basis until FCI could develop a completely new back-office system and then "cutover" from the legacy

²¹ This is especially the case for POLR customers, whose rates are set by Maine statute. 35-A M.R.S. §§ 7221-7227.

²² The Transaction does not raise any slamming concerns or necessitate compliance with procedures to notify customers prior to a carrier-to-carrier sale or transfer of subscribers as it does not involve a change in any customer's existing service provider. Upon closing of the Transaction, the customers of each FairPoint Maine provider will remain with their carrier and will continue to be served under that provider's existing authorizations.

²³ 47 U.S.C. § 214.

Attachment 3

THE STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DT 16-_____

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC.

and

FAIRPOINT COMMUNICATIONS, INC.

**Joint Petition for Findings in Furtherance of the
Acquisition of FairPoint Communications, Inc.,
and its New Hampshire Operating Subsidiaries
by Consolidated Communications Holdings, Inc.**

SUMMARY

This is a joint petition by Consolidated Communications Holdings, Inc., and FairPoint Communications, Inc., two longstanding wireline providers, both public companies in good standing, to allow them to merge at a national level as expeditiously as possible to pursue the opportunities of more significant scale while continuing to pursue excellence in service at a local level in the states currently served by them. The merger does not involve a technical cutover of any kind, does not reduce competition in any market, and creates a more financially sound entity that will pool the management resources of two companies whose roots started in telephone service in the 19th century.

Holdings will contribute all of the equity interest in FairPoint to its direct, wholly owned subsidiary, CCI, so that FairPoint will be a direct, wholly owned subsidiary of CCI.

After the Transaction closes, Bob Udell, the current President and Chief Executive Officer of Consolidated Holdings, will continue to serve as President and Chief Executive Officer of the combined company, and one director from the FairPoint Board of Directors will join the Board of Directors of Consolidated Holdings, which will expand from 8 to 9 directors. Consolidated Holdings will continue to be publicly traded, and no person or entity will hold or will control ten percent or more of the equity or voting equity of Consolidated Holdings upon the closing of the Transaction. The combined company will retain the Consolidated Communications name and will be headquartered in Mattoon, Illinois. As a result, NNETO, Northland, ECNNE and UILD will become indirect subsidiaries of Consolidated Holdings. Diagrams depicting the pre-and post-Transaction corporate ownership structures are submitted herewith as Attachment 3.

The Transaction will be seamless to all current FairPoint retail and wholesale customers in New Hampshire and in all other states in which FairPoint conducts business, as well as to all carriers with which FairPoint interconnects (including, without limitation, Rural Local Exchange Carriers ("RLECs")). Because the Transaction involves only a change of ownership at the holding company level, it will not affect any of the operations or obligations of FairPoint or its subsidiaries. Immediately after the Transaction, FairPoint and its subsidiaries will remain intact and will continue to adhere to their contractual and other obligations, including NNETO's current retail and wholesale obligations as an ILEC-ELEC. No existing retail or wholesale services, or any interconnection-based services with other carriers, will be discontinued or interrupted as the result of the Transaction. Therefore, customers will not experience any change

in services, rates, or terms and conditions of service. There will be no need to change any billing systems or operational support systems before or after the closing of the Transaction. Existing tariffs, interconnection agreements, retail catalogs and customer agreements will not be affected by the Transaction and will remain in effect. Future changes, if any, in rates, terms and conditions of service will be made in accordance with applicable rules and notice requirements.⁶

A significant majority of FairPoint's existing employees who provide services in Maine, New Hampshire and/or Vermont will be retained, which, when coupled with the employees of the Consolidated Companies, will ensure the availability of a skilled workforce with knowledge and experience in providing retail and wholesale services. Consolidated and CCI will honor all current collective bargaining agreements with FairPoint's union employees and will offer management employees benefits comparable to those that they currently enjoy.

The Transaction is expected to strengthen Consolidated's growth opportunities, enhancing its scale with a fiber-rich network that will extend across 24 states and include 35,100 fiber route miles, 8,500 on-network buildings, 2,400 fiber connected towers, 839,600 voice connections and 795,500 data and internet connections. It will also provide Consolidated with additional operating and strategic flexibility going forward. The Transaction is expected to generate annual operating synergies of approximately \$55 million, including \$45 million in annual savings from reduced operating costs and \$10 million in annual savings in vendor and other third-party costs, within two years after completion of the merger.

FairPoint's merger into the Consolidated organization will result in a stronger company that will be well-positioned to meet its obligations as an ILEC-ELEC and as a carrier-of-last-

⁶ The Transaction does not raise any slamming concerns or necessitate compliance with procedures to notify customers prior to a carrier-to-carrier sale or transfer of subscribers as the Transaction does not involve a change in any customer's existing service provider. The customers of NNETO and Northland will remain with their current carrier and will continue to be served under the carrier's existing authorizations.

Attachment 4

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC

v.

PUBLIC UTILITIES COMMISSION et al.

Argued April 6, 2016
Decided April 14, 2016

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY,
JJ.

MEMORANDUM OF DECISION

Northern New England Telephone Operations LLC, d/b/a FairPoint Communications—NNE, appeals from an order of the Public Utilities Commission affirming the Rapid Response Process Team’s (RRPT) finding that FairPoint owes Biddeford Internet Corporation, d/b/a Great Works Internet (GWI), a credit of \$352,434. The credit relates to fees that GWI pays FairPoint pursuant to the companies’ interconnection agreement.

We decline to address FairPoint’s argument that the RRPT violated its due process rights because that issue was not timely raised. *See Dillon v. Select Portfolio Servicing*, 630 F.3d 75, 80 (1st Cir. 2011); *Antler’s Inn & Rest., LLC v. Dep’t of Pub. Safety*, 2012 ME 143, ¶ 9 & n.2, 60 A.3d 1248. Additionally, as to the RRPT’s determination of GWI’s account balance, we cannot conclude—under any standard of review applicable to factual findings—that the determination was erroneous. *Compare City of Portland v. Pub. Utils. Comm’n*, 656 A.2d 1217, 1221 (Me. 1995) (explaining that when a utility that had the burden of proof before the Commission challenges the Commission’s factual findings, we will reverse on appeal “only if the record compels a contrary conclusion”), *with Am. Ass’n of Retired Pers. v. Pub. Utils. Comm’n*, 678 A.2d 1025, 1030 (Me. 1996) (stating, in a

case where the appellant did not have the burden of proof before the Commission, that our review of the Commission's factual findings was limited to whether those findings were "supported by substantial evidence in the record").

The entry is:

Order of the Public Utilities Commission affirmed.

On the briefs:

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At oral argument:

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